

RECORDING REQUESTED BY:
Mr. Thomas Foster
Foster-Gardner, Inc.
1577 First Street
Coachella, California 92236

WHEN RECORDED, MAIL TO:

Department of Toxic Substances Control
5796 Corporate Avenue
Cypress, California 90630
ATTENTION: Mr. Greg Holmes, Unit Chief
Brownfields and Environmental Restoration
Program

DOC # 2009-0166734

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Recorded in Official Records

County of Riverside

Larry W. Ward

Assessor, County Clerk & Recorder



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SPACE ABOVE THIS LINE RESERVED FOR RECORDER'S USE

COVENANT TO RESTRICT USE OF PROPERTY

ENVIRONMENTAL RESTRICTION

(Re: County of Riverside Assessor Parcel Number 7780-200-01-7 and
7780-200-02-8, Foster-Gardner, Inc., DTSC Site Code 400305)

This Covenant and Agreement ("Covenant") is made by and between Foster-Gardner, Inc. (the "Covenantor"), the current owner of property situated in Coachella, County of Riverside, State of California, described in Exhibit "A" and depicted in Exhibit "B," attached, (the "Property"), and the Department of Toxic Substances Control (the "Department"). Pursuant to Civil Code section 1471, the Department has determined that this Covenant is reasonably necessary to protect present or future human health or safety or the environment as a result of the presence on the land of hazardous materials as defined in Health and Safety Code section 25260. The Covenantor and Department, collectively referred to as the "Parties," hereby agree, pursuant to Civil Code section 1471, and Health and Safety Code section 25355.5 that the use of the Property be restricted as set forth in this Covenant; and the Parties further agree that the Covenant shall conform with the requirements of California Code of Regulations,

title 22, section 67391.1.

ARTICLE I
STATEMENT OF FACTS

1.01. The Property, totaling approximately 2.79 acres, is more particularly described and depicted in the attached Exhibits "A" and "B". The Property is located in the area now generally bounded by a vacant lot (formerly known as the Brandenburg Property) to the north and west, First Street to the southeast, and a concrete septic tank/pipe manufacturing and storage yard (Desert Ready Mix) to the east and northeast. This property is more specifically described as Foster-Gardner, Inc., County of Riverside Assessor's Parcel Nos.: 7780-200-01-7 and 7780-200-02-8.

1.02. Covenantor is remediating the Property under the supervision and authority of the Department pursuant to a Removal Action Workplan, which the Covenantor provided in accordance with the Imminent and Substantial Endangerment Order and Remedial Action Order 92/93-004, issued by the Department on August 21, 1992 pursuant to Chapter 6.8 of Division 20 of the H&SC. The Covenantor has also entered into an Operation and Maintenance Agreement (O&M Agreement), between Covenantor and the Department, dated February 7, 2002. Because hazardous substances, as defined in H&SC section 25316, which are also hazardous wastes as defined in H&SC section 25117 and hazardous materials as defined in H&SC section 25260, including organochlorine pesticides, volatile organic compounds, ammonia, organophosphate, pesticides, general minerals, and/or herbicides remain in the soil and groundwater in and under portions of the Property, the Removal Action Workplan provides that a land use covenant be required as part of the site remediation. The Department circulated the Removal Action Workplan, which contains a Final Health Risk Assessment. The Removal Action Workplan was approved by the Department on March 20, 1997. Remediation includes groundwater monitoring wells ("Monitoring Wells"). The locations of the Monitoring Wells are shown on Exhibit "B". The operation and maintenance of the Monitoring Wells is pursuant to an Operation and Maintenance

Manual incorporated into the O&M Agreement

1.03. Soil removal activities were conducted at and in the vicinity of the Site during the period from November 20, 1998 to January 11, 1999. The objectives of the soil removal action were to prevent ingestion and dermal contact of the soil that contained Compounds of Potential Concern (COPCs) above Soil Remediation Goals (SRGs), to prevent fugitive dust generation of soil that contained COPCs above SRGs, and to minimize transfer of COPCs from soil to groundwater. Following the soil removal activities, confirmation soil sampling at the site showed the total dichlorodiphenyltrichloroethane (DDT) concentration in the soil at the Site to be up to 47.31 mg/kg. According to the baseline risk assessment that was performed for this site, the SRG for DDT was 5 mg/kg for residential land use. The January, 2005 California Human Health Screening Level for DDT in the soil for residential land use is 1.6 mg/kg. Therefore, the Site does not meet the criteria for residential land use, and requires a land use covenant to restrict land uses.

1.04. Groundwater in the vicinity of the Property is found approximately 8.5 to approximately 10.5 feet below ground surface. Contaminants in the groundwater at the time of the Final Risk Assessment included ammonia (up to 7,100,000 µg/L), 1,2-dichloropropane (up to 290 µg/L), 1,2-dichloroethane (up to 37 µg/L), benzene (up to 3.7 µg/L), and 1,2-dibromomethane (up to 45 µg/L). Maximum contaminant levels are 35,000 µg/L for ammonia, 5 µg/L for 1,2-dichloropropane, 5 µg/L for 1,2-dichloroethane, 5 µg/L for benzene, and 0.05 µg/L for 1,2-dibromomethane. The Department concludes that, at the time of the Final Risk Assessment, the groundwater exceeded acceptable health risk-based levels. However, groundwater in the vicinity is not currently used for domestic consumption.

ARTICLE II

DEFINITIONS

2.01. Department. "Department" means the California Department of Toxic

Substances Control and includes its successor agencies, if any.

2.02. Environmental Restrictions. "Environmental Restrictions" means all protective provisions, covenants, restrictions, prohibitions, and terms and conditions as set forth in any section of this Covenant

2.03. Improvements. "Improvements" includes, but is not limited to: buildings, structures, roads, driveways, improved parking areas, wells, pipelines, or other utilities.

2.04. Lease. "Lease" means lease, rental agreement, or any other document that creates a right to use or occupy any portion of the Property.

2.05. Occupant. "Occupant" means Owners and any person or entity entitled by ownership, leasehold, or other legal relationship to the right to occupy any portion of the Property.

2.06. Owner. "Owner" means the Covenantor, and all successors in interest including heirs and assigns, who at any time hold title to all or any portion of the Property.

ARTICLE III GENERAL PROVISIONS

3.01. Runs with the Land. This Covenant sets forth Environmental Restrictions that apply to and encumber the Property and every portion thereof no matter how it is improved, held, used, occupied, leased, sold, hypothecated, encumbered, or conveyed. This Covenant: (a) runs with the land pursuant to Health and Safety Code section 25355.5, and Civil Code section 1471; (b) inures to the benefit of and passes with each and every portion of the Property, (c) is for the benefit of, and is enforceable by the Department, and (d) is imposed upon the entire Property unless expressly stated as applicable only to a specific portion thereof.

3.02. Binding upon Owners/Occupants. Pursuant to the Health and Safety Code, this Covenant binds all owners of the Property, their heirs, successors, and assignees, and the agents, employees, and lessees of the owners, heirs, successors, and assignees. Pursuant to Civil Code section 1471, all successive owners of the Property are expressly bound hereby for the benefit of the Department.

3.03. Incorporation into Deeds and Leases. This Covenant shall be incorporated by reference in each and every deed and Lease for any portion of the Property.

3.04. Conveyance of Property. The Owner shall provide written notice to the Department not later than thirty (30) days after any conveyance of any ownership interest in the Property (excluding Leases, and mortgages, liens, and other non-possessory encumbrances). The written notice shall include the name and mailing address of the new owner of the Property and shall reference the site name and site code as listed on page one of this Covenant. The notice shall also include the Assessor's Parcel Number (APN) noted on page one. If the new owner's property has been assigned a different APN, each such APN that covers the Property must be provided. The Department shall not, by reason of this Covenant, have authority to approve, disapprove, or otherwise affect proposed conveyance, except as otherwise provided by law or by administrative order.

3.05. Costs of Administering the Covenant to be paid by Owner. The Department has already incurred and will in the future incur costs associated with the administration of this Covenant. Therefore, the Covenantor hereby covenants for the Covenantor and for all subsequent Owners that, pursuant to California Code of Regulations, title 22, section 67391.1(h), the Owner agrees to pay the Department's costs in administering the Covenant.

ARTICLE IV
RESTRICTIONS AND REQUIREMENTS

4.01. Prohibited Uses. The Property shall not be used for any of the following purposes:

- (a) A residence, including any mobile home or factory built housing, constructed or installed for use as residential human habitation.
- (b) A hospital for humans.
- (c) A public or private school for persons under 21 years of age.
- (d) A day care center for children.

4.02. Soil Management.

- (a) No activities that will disturb the soil at or below 8.5 feet below grade (e.g., excavation, grading, removal, trenching, filling, earth movement, mining, or drilling) shall be allowed on the Property without a Soil Management Plan approved by the Department in advance.
- (b) Any contaminated soils brought to the surface by grading, excavation, trenching or backfilling shall be managed in accordance with all applicable provisions of state and federal law.

4.03. Prohibited Activities. The following activities shall not be conducted at the Property:

- (a) Drilling for water, oil, or gas without prior written approval by the Department.
- (b) Extraction of groundwater except as approved by the Department in a Groundwater Management Plan.

4.04. Non-Interference with Cap.

- (a) Activities that may disturb the Cap (e.g. excavation, grading, removal, trenching, filling, earth movement, or mining) shall not be permitted on the Capped Property without prior written approval by the Department.
- (b) All uses and development of the Capped Property shall preserve the integrity or effectiveness of the Cap.
- (c) For Monitoring Wells: all uses shall preserve the physical accessibility to and integrity of the groundwater monitoring system.
- (d) The Cap and Groundwater Monitoring System shall not be altered without prior written approval by the Department.

4.05. Access for Department. The Department shall have reasonable right of entry and access to the Property for inspection, monitoring, and other activities consistent with the purposes of this Covenant as deemed necessary by the Department in order to protect the public health or safety, or the environment.

4.06. Access for Implementing Operation and Maintenance. The entity or person responsible for implementing the O&M Agreement shall have reasonable right of entry and access to the Property for the purpose of implementing the O&M Agreement until the Department determines that no further Operation and Maintenance is required.

4.07. Inspection and Reporting Requirements. The Owner shall conduct an annual inspection of the Property verifying compliance with this Covenant, and shall submit an annual inspection report to the Department for its approval by January 15th of each year. The annual inspection report must include the dates, times, and names of those who conducted the inspection and reviewed the annual inspection report. It also shall describe how the observations were performed that were the basis for the

statements and conclusions in the annual inspection report (e.g., drive by, fly over, walk in, etc.). If violations are noted, the annual inspection report must detail the steps taken to return to compliance. If the Owner identifies any violations of this Covenant during the annual inspections or at any other time, the Owner must within ten (10) days of identifying the violation: determine the identity of the party in violation, send a letter advising the party of the violation of the Covenant, and demand that the violation cease immediately. Additionally, copies of any correspondence related to the violation of this Covenant shall be sent to the Department within ten (10) days of its original transmission.

ARTICLE V ENFORCEMENT

5.01. Enforcement. Failure of the Owner or Occupant to comply with this Covenant shall be grounds for the Department to require modification or removal of any Improvements constructed or placed upon any portion of the Property in violation of this Covenant. Violation of this Covenant, including but not limited to, failure to submit, or the submission of any false statement, record or report to the Department, shall be grounds for the Department to pursue administrative, civil, or criminal actions, as provided by law.

ARTICLE VI VARIANCE, TERMINATION, AND TERM

6.01. Variance. Owner, or any other aggrieved person, may apply to the Department for a written variance from the provisions of this Covenant. Such application shall be made in accordance with Health and Safety Code section 25233.

6.02. Termination or Partial Termination. Owner, or any other aggrieved person, may apply to the Department for a termination or partial termination of one or more terms of this Covenant as they apply to all or any portion of the Property. Such

application shall be made in accordance with Health and Safety Code section 25234.

6.03 Term. Unless ended in accordance with paragraph 6.02, by law, or by the Department in the exercise of its discretion, this Covenant shall continue in effect in perpetuity.

ARTICLE VII MISCELLANEOUS

7.01. No Dedication Intended. Nothing set forth in this Covenant shall be construed to be a gift or dedication, or offer of a gift or dedication, of the Property, or any portion thereof to the general public or anyone else for any purpose whatsoever.

7.02. Recordation. The Covenantor shall record this Covenant, with all referenced Exhibits, in the County of Riverside within ten (10) days of the Covenantor's receipt of a fully executed original

7.03. Notices. Whenever any person gives or serves any Notice ("Notice" as used herein includes any demand or other communication with respect to this Covenant), each such Notice shall be in writing and shall be deemed effective: (1) when delivered, if personally delivered to the person being served or to an officer of a corporate party being served, or (2) three (3) business days after deposit in the mail, if mailed by United States mail, postage paid, certified, return receipt requested:

To Owner: Mr. Thomas Foster
 Foster-Gardner, Inc.
 1577 First Street
 Coachella, California 92236

and

To Department: Mr. Greg Holmes, Unit Chief
 Department of Toxic Substances Control

Brownfields and Environmental Restoration Program
Cypress Office
5796 Corporate Avenue
Cypress, California 90630

Any party may change its address or the individual to whose attention a Notice is to be sent by giving written Notice in compliance with this paragraph.

7.04. Partial Invalidity. If this Covenant or any of its terms are determined by a court of competent jurisdiction to be invalid for any reason, the surviving portions of this Covenant shall remain in full force and effect as if such portion found invalid had not been included herein.

7.05. Statutory References. All statutory references include successor provisions.

7.06. Incorporation of Attachments. All attachments and exhibits to this Covenant are incorporated herein by reference.

IN WITNESS WHEREOF, the Parties execute this Covenant.

Covenantor: Foster-Gardner, Inc.

By:



Title:

Thomas Foster, Owner

Date:

1/29/2009

State of California
County of RIVERSIDE

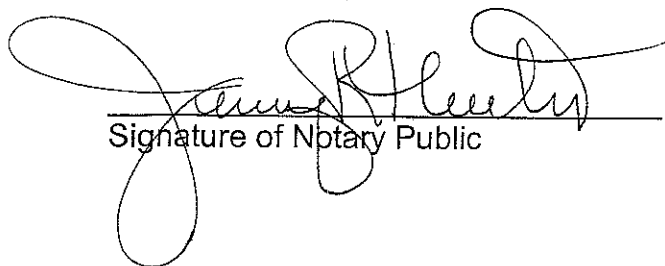
On JANUARY 29, 2009 before me,

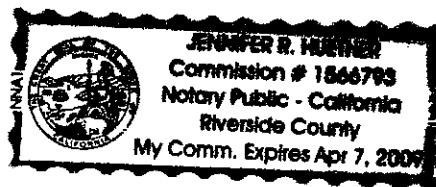
JENNIFER R. HUETHER - Notary

(space above this line is for name and title of the officer/notary),

personally appeared THOMAS FOSTER, who
proved to me on the basis of satisfactory evidence to be the person(s) whose name(s)
is/are subscribed to the within instrument and acknowledged to me that he/she/they
executed the same in his/her/their authorized capacity(ies), and that by his/her/their
signature(s) on the instrument the person(s), or the entity upon behalf of which the
person(s) acted, executed the instrument. I certify under PENALTY OF PERJURY
under the laws of the State of California that the foregoing paragraph is true and
correct.

WITNESS my hand and official seal,

 (seal)
Signature of Notary Public



Department of Toxic Substances Control:

By: 

Title: John Scandura, Performance Manager
Brownfields and Environmental Restoration Program
Cypress Office

Date: Feb 9, 2009

State of California


County of Orange

On February 9, 2009 before me,

Deborah R. Saito, Notary Public
(space above this line is for name and title of the officer/notary),

personally appeared John E. Scandura, who
proved to me on the basis of satisfactory evidence to be the person(s) whose name(s)
is/~~are~~ subscribed to the within instrument and acknowledged to me that he/~~she~~/~~they~~
executed the same in his/~~her~~/~~their~~ authorized capacity(ies), and that by his/~~her~~/~~their~~
signature(s) on the instrument the person(s), or the entity upon behalf of which the
person(s) acted, executed the instrument. I certify under PENALTY OF PERJURY
under the laws of the State of California that the foregoing paragraph is true and
correct.

WITNESS my hand and official seal,

 (seal)
Signature of Notary Public

